IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 110 of 2007

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MOTAP GRAM PANCHAYAT - Appellant(s)
Versus
RABARI VARVABHAI HIRABHAI - Defendant(s)

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Appearance :
MR CH VORA for Appellant
MR MEHUL SHARAD SHAH for Respondent

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT
5th September, 2007

ORAL JUDGMENT

Heard the learned advocates.

The Appellant-Motap Gram Panchayat, defendant in Regular Civil Suit No. 30 of 1992, has preferred the present Appeal under Section 100 CPC against the judgment and order dated 20th July, 2006 passed by the learned Addl. District

Judge & Presiding Officer, Fast Track Court, Mehsana in Regular Civil Appeal No. 253 of 2005.

The respondent-plaintiff instituted above referred Regular Civil Suit No. 30 of 1992 in the Court of learned Civil Judge (JD), Chanasma for declaration of title and permanent injunction in respect of the suit Vada admeasuring 170' x 50'. According to the plaintiff, the plaintiff and his ancestors have been using the suit Vada for more than 100 years; the suit Vada was fenced by a wall; and that the defendant Panchayat has been interfering with the possession of the plaintiff. Therefore, the suit.

The suit was contested by the appellant-defendant by written statement Exh.167. According to the defendant, the possession of the plaintiff was not continuous, as alleged. In the year 1983, the defendant had, in the wake of removal of encroachment, removed the plaintiff from the suit Vada. In support thereof, the defendant produced panchnama Exh.219 and the account statement Exh.220. The learned Civil Judge, by *impugned* judgment and order dated 26th April, 2002, held that the plaintiff and his ancestors were in continuous possession of the suit Vada for more than 100 years; and that the plaintiff had become the owner of the suit Vada by adverse possession. In view of the said finding, the learned Civil Judge allowed the suit and passed decree for declaration and permanent injunction in favour of the plaintiff. Feeling aggrieved, the defendant preferred Regular Civil Appeal No. 46 of 2002 (*re-numbered as Regular Civil Appeal No. 253 of 2005*) in the Court of learned District Judge, Mehsana. The learned Additional District Judge confirmed the finding recorded by the learned Civil Judge and dismissed the suit. Therefore, the present Appeal.

Mr. Vora has submitted that the land of the suit Vada belongs to the State Government. The suit Vada has been vested in the defendant-Panchayat for administration under the powers conferred by Section 108 of the Gujarat

Panchayat Act, 1961. He has submitted that it is the State Government which is the true and real owner of the suit Vada. The suit for title by adverse possession, in absence of the State Government, was not maintainable. The Courts below have committed material irregularity in decreeing the suit for declaration of title by adverse possession. He has also submitted that for establishing the title by adverse possession, the plaintiff was required to establish continuous possession for thirty years immediately prior to the date of the suit. He has submitted that there was ample evidence (Exh. 219 & 220) to establish that in the year 1983 the plaintiff had been dispossessed of the suit Vada. The plaintiff's possession, therefore, cannot be said to be continuous to confer title by adverse possession. He has also submitted that the Courts below have erred in not believing the documents Exhs. 219 & 220. He has submitted that once the said documents were admitted in evidence, the genuineness of the contents thereof stood established. There was no reason for the Courts not to believe the contents of the said documents. In support of his submissions, he has relied upon the judgments of the *Hon'ble* Supreme Court in the matters of ***D.N Venkatarayappa & Another vs. State of Karnataka & Ors.*** (AIR 1997 SC 2930) and of ***Karnataka Board of Wakf vs. Government of India & Ors.*** ((2004) 10 SCC 779).

I am unable to agree with Mr. Vora. Neither in the written statement nor in the appeal memo in the lower appellate Court, the defendant raised the *plea* regarding ownership of the suit Vada. In absence of a specific *plea* that the State Government was the real and true owner of the suit Vada; in absence of a precise issue framed on the point and in absence of any evidence to that effect, the *plea* taken up for the first time in the present Second Appeal cannot be entertained. Both the Courts below have recorded concurrent finding that the plaintiff and his ancestors were in continuous possession of the suit Vada for 100 years and more. I am of opinion that the forcible dispossession of the plaintiff in

the year 1983, *if any,* would not alter this position.

No other contention is raised before me.

No question of law much less a substantial question of law arises in this Appeal. The Appeal is dismissed *in limine.*

{Ms. R.M Doshit, J.}

Prakash*